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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/247,209	02/09/1999	PAUL PAZANDAK	044557.0000	7376

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H DALE LANGLEY
THE LAW FIRM OF H DALE LANGLEY JR
610 LYNN
AUSTIN, TX 78703

EXAMINER	
HONG, STEPHEN S	
ART UNIT	PAPER NUMBER
2178	15

DATE MAILED: 09/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/247,209	Applicant(s) PAZANDAK, PAUL	
	Examiner Stephen S. Hong	Art Unit 2178	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on 6/27/03 .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☐ Claim(s) 1-13 is/are pending in the application.

4a) Of the above claim(s) 1,2 and 4-13 is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) 3 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) 1,2 and 4-13 are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

1. This office action is responsive to the amendment filed on June 27, 2003. In the amendment, claims 11-13 have been added. Claims 1-2 and 4-10 remain withdrawn from consideration, per the Election, filed 12/2/02, in which applicant elected group III (claim 3) without traverse.

2. The rejection of claim 3 under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter, has been withdrawn in view of the amendment.

3. The rejection of claim 3 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention has been withdrawn in view of the amendment.

Election/Restrictions

4. Newly submitted claims 11-13 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Newly added claim 11 is a substantially duplicate of the non-elected Claim 1 and newly added claim 13 is a duplicate of non-elected Claim 5, both rewritten to be dependent on Claim 3. The Claims 11-13 are thus restrictable based on the election of species, where the previously examined claim 3 is a generic. Since Applicant has elected, without traverse, Claim 3 to be examined on its merits, rewriting the non-elected claims in the dependent form still warrants restrictions.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for

prosecution on the merits. Accordingly, claims 11-13 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claim 3 remains rejected under 35 U.S.C. 103(a) as being unpatentable over Davidson et al (6,083,276).

Davidson discloses:

"parsing an XML document". See Davidson's abstract, in which he discloses *creating a parse tree from an application description file*. At figure 2 (204), Davidson discloses an *XML Parse Tree.*

"acquiring the XML document". Refer to Davidson's figure 2 (202), in which he discloses an *application description file*. At column 6 (lines 45-49), Davidson discloses, *Preferably, the ADF **202** is an XML-compliant text document that defines a component-based application using a descriptive attribute grammar.*

"associating the XML document with a call", "calling a code", and "creating a type specific object from the XML document because of the code". Refer to Davidson's

abstract, in which he discloses, *transforming the parse tree into a plurality of components corresponding to instances of classes in an application framework, and initializing and further processing the components to launch the component-based application.* Thus, while Davidson does not explicitly employ the language "associating . . . with a call", "calling a code", and creating a type specific object . . . because of the code", it would have been obvious to one of ordinary skill in the art at the time of the invention to "associate the XML document with a call", "call a code" and "create a type specific object from the XML object because of the code" because Davidson's transformation of the parse tree into components *corresponding to instances of classes* in an application framework would implies a correspondence between the components and the instances. Using a call and "calling a code" would have been obvious to one of ordinary skill in the art as a well known way of accessing the corresponding components. Here it is noted that in Applicant's response filed on 8/13/02 (Request for Reconsideration, paper #9), at page 2 (top), Applicant argued: "Applicant uses the term 'type-specific object' in the claims to mean an instance of a class". In accordance with this definition, the Examiner contends that Davidson properly teaches "type specific object".

Response to Arguments

7. Applicant's arguments filed on June 27, 2003 have been fully considered but they are not persuasive.

On page 4 of the amendment, Applicant points out the following:

> Particularly, the concept or step of creating a parse tree from a document is not involved in Applicant's claimed invention. In fact, a basic concept of Applicant's claimed invention is that no parse tree is created or necessary to achieve the result of a particular type specific object from an XML document. This is a ground for Applicant's patentability.
>
> It would not have been obvious to achieve the result of a particular type specific object from an XML document without creating any parse tree. Applicant's claimed invention is directed particularly to creating the type specific object from the XML document, via use of a call associated with the XML document and wherein the call involves a particular code that gives the object. There is not any parse tree required.

However, the argument is not persuasive. It is true that Davidson, in the abstract discloses creating a parse tree from an application description file. Nevertheless, In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "no parse tree is created or necessary to achieve the result of a particular type specific object from an XML document") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). In fact, it should be pointed out that the currently claimed language is in the open-ended form, i.e., "comprising the steps of". Therefore, the claim does not preclude the additional steps that Davidson may have.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Hong whose telephone number is (703) 308-5465. The examiner can normally be reached on Monday-Friday from 8:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, HEATHER HERNDON, can be reached on (703) 308-5186. The fax phone numbers for the organization where this application or proceeding is assigned are:

(703) 746-7238 **(After Final Communication)**

(703) 746-7239 **(Official Communication)**

(703) 746-7240 **(Status Inquiries, Draft Communication)**.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

Stephen Hong
Primary Examiner
Art Unit 2178
September 4, 2003